

**Rules and Ancillary Document Review Checklist**

Document Reviewed (include title): **WAC 458-20-121 Sales of heat or steam – Including production by cogeneration.**

Date last adopted: **6/6/1994**

Reviewer: **PAT MOSES**

Date review completed: **5/17/2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If “YES”, provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

- ◆ **This rule is intended to provide tax-reporting information for persons who sell heat and/or steam, either directly or as a product of a cogeneration facility. It also explains the tax consequences of a person producing their own fuel to generate heat, steam, or electricity. The rule is also used by departmental staff and promotes consistent application of tax to these businesses.**

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

- ◆ **WAC 458-20-121 addresses several business activities that are not adequately covered anywhere else in the WAC. These activities could easily be mistakenly classified as manufacturing activities, and so this rule is necessary to promote consistent application of tax by both taxpayers and agency personnel.**



3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following document contains information that should be incorporated into this rule.

- ♦ **ETA 109.04.136 Manufacturing contaminant incidentally used for other purposes – Business tax under the “Manufacturing” classification does not apply where a taxpayer incidentally produces heat used in steam generation for the plant, while removing a dangerous contaminant from equipment. (An ancillary document review was completed and submitted with the review of Rule 136.)**

The following document can be repealed.

- ♦ **ETA 474.04.136 Taxability of the manufacture of “refinery gas” – Production of refinery gas, created as a result of refining oil, is subject to B&O tax as a byproduct. This ETA was reviewed as an ancillary document along with the review of Rule 136. It has been recommended that this ETA be repealed since the information it contains is already largely contained in subsection (5) of Rule 121, which discusses fuels in general.**

4. Clarity and Effectiveness:



YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

- ◆ **This rule is relied upon by taxpayers and departmental staff to determine taxability and to promote consistency. The review of administrative decisions (WTD's) and Board of Tax Appeals decisions indicates that the rule is reasonable, clear, and to the point.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no", identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

- ◆ **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?



Please explain.

- ♦ **The subject matter and taxes in Rule 121 are the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

- ♦ **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- ♦ **This rule aids taxpayers by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **The following statutes are implemented to the extent they apply to sales of heat / steam, cogeneration tax incentives, cogeneration in general, and in-house production of fuels for industrial use:**

- ♦ **RCW 82.04.220 Business and occupation tax imposed.**
- ♦ **RCW 82.04.110 “Manufacturer”**
- ♦ **RCW 82.04.120 “To manufacture”**
- ♦ **RCW 82.04.240 Tax on manufacturers.**
- ♦ **RCW 82.04.290 Tax on international investment management services or other business or service activities.**



- ◆ **RCW 82.04.450 Value of products, how determined.**
- ◆ **RCW 82.08.020 Tax imposed – Retail sales – Retail car rental.**
- ◆ **RCW 82.12.020 Use tax imposed.**
- ◆ **RCW 82.12.0263 Exemptions -- Use of fuel by extractor or manufacturer thereof.**
- ◆ **RCW 82.16.020 Public utility tax imposed -- Additional tax imposed -- Deposit of moneys.**
- ◆ **RCW 82.16.050 Deductions in computing tax.**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- ◆ **ETA 109.04.136 Manufacturing contaminant incidentally used for other purposes (ancillary document review included with review of Rule 136)**
- ◆ **ETA 474.04.136 Taxability of the manufacture of “refinery gas” (ancillary document review included with review of Rule 136)**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- ◆ **Rule 136, Manufacturing, processing for hire, fabricating**
- ◆ **Rule 17901, Public utility tax – Energy conservation and cogeneration deductions**

10. Review Recommendation:

_____ Amend

_____ Repeal

_____ **X** Leave as is

_____ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

_____ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you’ve identified/recommended earlier in this review document.)



The rule is correct as is. No significant changes in law have occurred for this topic since the rule's last revision in 1994. ETA 109 contains information that the Department should consider adding when Rule 121 is next revised, but there is no need to revise this rule at this time. The information in ETA 474 already exists as a broader topic in Rule 136 and should be repealed.

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: